



DISABILITY LAW & ADVOCACY CENTER

of Tennessee

May 22, 2007

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Via Email & U.S. Mail

RE: CAP Comments to 2008 DRS State Plan

Dear Andrea,

Thank you again for allowing the Client Assistance Program to make public comments at the State Plan Public Hearings, as well as for the opportunity to submit these written comments. I hope you received some good feedback from your staff that did a wonderful job presenting at these hearings. The public participation seemed a little better than in years past.

The Client Assistance Program (CAP) recommends that the Division consider changing those Public Hearing locations, such as Knoxville VR State Office, to ones more conducive to consumer attendance and comment. The best attended public hearing, for example, was in the Jackson Center for Independent Living and this seemed to promote an environment more "consumer comment friendly" than a State Office building. It was also suggested that State Plan Public Hearings no longer be held on Wednesday nights as this is a traditional Church night for many Tennesseans. The Division may also consider holding a public hearing in conjunction with the Disability Mega Conference held each spring in the same month as VR State Plan Public Hearings.

The Client Assistance Program conducted focus groups throughout the State of Tennessee, prior to VR State Plan Public Hearings, to gather information from consumers of VR services. These comments reflect the predominant issues reported to the CAP this year.

One issue which was repeated in every focus group, but which is not addressed in any of the VR State Plan Attachments below, is the "15 Hour Rule" in Tennessee. In a survey of the 50 State VR programs, "Full time student" is almost universally defined as either 12 hours or "as defined by the university". The University of Tennessee system defines full time as 12 semester hours¹. Yet, students who are

¹ University of Tennessee Undergraduate Catalog



VR clients in Tennessee are forced to enroll in 15 hours every semester unless they can obtain sufficient paperwork to receive an exception from their VR Counselor.

At one time what may have appeared to be an effective way of saving money for the agency when the agency was serving individuals with varying degrees of disability, is now an onerous burden on individuals with the most significant disabilities that VR serves. By definition, one is not eligible for VR services unless one can prove adequate impairment or “two or more functional limitations” to become eligible, and yet these individuals are required to take more courses each semester than their *non-disabled* peers.

The Client Assistance Program receives more calls on this topic each year than any other issue. Most of the calls are received from client/students who have been placed on academic probation because they tried to take too large a courseload, given their level of disability, to maintain the 2.0 *Cumulative* GPA required by VR. These individuals are then forced by VR to pay for the next semester themselves to try to bring up their cumulative GPA. Many simply drop out.

CAP believes this policy is discriminatory on its face and should be immediately revised to 12 hours for full time status with provision for an exception for fewer hours, if necessary, because of the individual’s disability.

Attachment 4.8(b)(2) Coordination with Education Officials

CAP Comment: CAP wishes to commend the Division on the recently reported statistic that Tennessee DRS ranks above the national average in terms of percentage of clients served who are transition school to work referrals². However, since school systems are responsible for students eligible for special education services until age 22 or until a regular ed diploma is earned, it is recommended that the Division make sure DRS is not providing services that would more appropriately remain the responsibility of the school system through their Transition School to Work responsibilities under IDEIA.

Attachment 4.8(b)(3) Cooperative Agreements with Private Nonprofit Organizations

CAP Comment: CAP has represented a number of VR clients this past year who had complaints regarding the contracted job placement providers throughout the State of Tennessee. Most complaints involved the lack of job leads; the lack of communication; and/or the inappropriateness of the job referrals, or ill-equipped counselors. In addition, in the upper eastern part of the state, we have received a number of reports that job placement services could not be offered at all by DRS “due to the lack of resources”. With employment outcomes for persons with disabilities being the primary purpose of the Vocational Rehabilitation system, CAP strongly recommends the Division conduct a self-evaluation of the effectiveness of its job placement vendors to establish increased accountability.

² 42% of Tennessee’s total VR client population compared to 26.4% national average

Attachment 4.10(b) Procedures and Activities regarding the Establishment and Maintenance of a Comprehensive System of Personnel Development

CAP Comment: In 2001, Rehab Act Regulations were promulgated to set out the minimum educational requirements for a VR counselor to have a Masters Degree in Rehabilitation Counseling or similar. Each state was to devise a plan to reach this level of staffing within 5 years. As of today, over 72%³ of Tennessee VR Counselors do NOT meet this standard. The CAP believes this requirement is not merely aspirational but required by the Rehab Act and Tennessee VR Clients deserve no less⁴.

Furthermore, we often see a direct correlation between certain aspects of the VR process and the lack of formalized education for the VR Counselor. An individual acting as a VR Counselor who has not met this minimum qualification can not, for instance, make an eligibility determination⁵ or approve and sign the client's Individualized Plan for Employment⁶.

Moreover, the current job posting for VR Counselor I on the State of Tennessee website does not even suggest that an individual must possess a Masters Degree in Rehabilitation Counseling (as required by the Rehab Act) rather "graduation from an accredited four-year college or university with a bachelor's degree." This job listing for VR Counselor I, apparently last revised in 1986, even lists a job duty of "consult with industries on advantages of hiring the handicapped" so this posting apparently not only predates any Rehabilitation Act educational requirements, but the ADA and disability etiquette people first language, as well. The Division has an obligation to individuals with disabilities in Tennessee receiving services under the Rehab Act to upgrade the minimum requirements for VR Counselor I and II to comply with the federal law.

That said, even though Tennessee DRS has raised its entry level salaries for VR Counselors approximately 60% in the last nine years, there are currently 223 Certified Rehabilitation Counselors⁷ in the State of Tennessee and only 44 of them work for the Division. To hire a "recruiter" when there may be an ample pool of qualified VR Counselors already in the state, and when the OPM job requirements are not even clear, appears to be somewhat fiscally irresponsible.

³ 2008 VR State Plan page 25, of the 250 VR Counselors, only 59 (23.6%) have a Masters Degree in Rehabilitation Counseling

⁴ Although our survey of the 50 states is not yet complete, most of the States who have responded report being either 100 percent compliant with this CSPD requirement or within a few individuals of meeting it.

⁵ 34 C.F.R. 361.42(a)

⁶ 34 C.F.R. §361.45(d)

⁷ <http://www.crccertification.com>

Attachment 4.11(c)(3) Order of Selection

CAP Comment: Given the recent report that Tennessee DRS' waiting list is the largest in the nation, the CAP was encouraged to hear reports during the State Plan Public Hearings that DRS is considering opening Priority Category 2 cases in the coming year.

The CAP encourages the Division to adhere to Rehabilitation Act Regulations which require eligibility determinations (and subsequent assignment of Priority Category) to be made by a Qualified Vocational Rehabilitation Counselor as described in the CSPD Comments above. Since October 1, 2006, the Client Assistance Program has represented 14 individuals who disagreed with their Priority Category Placement. Although seven of these cases are still pending, five of the seven closed cases were upgraded to Priority Category 1 from PC 2 or PC 3 after CAP intervention. Often this intervention involved merely pointing out to the VR Counselor documentation of functional limitations that already existed in the client's VR file or was easily obtained, but for which the Priority Category determination was incorrectly made. Six of the 14 reported that the time frame for eligibility determination had taken anywhere from four to six months, well beyond the 60 day maximum required by Federal law.

Given the incidence of incorrect priority category placements, the CAP would encourage the Division to carefully review all current PC 2 placements to locate individuals who should have been PC 1. This would be especially encouraged for those individuals receiving SSI or SSDI for which the Division's costs would be 100% reimbursed from the Social Security Administration through the Ticket to Work Program.

CAP would continue to encourage the Division to consider every possible cost cutting measure available before resorting to any reduction in services to clients currently being served. For instance, DRS had added and filled 40 additional VR Counselor positions since 2005 and a total of 48 new positions statewide⁸. Since staff salaries are the largest administrative expense of the agency⁹ and since DRS is currently serving less than half the number of clients they served prior to the implementation of the Order of Selection¹⁰, the CAP strongly suggests that the Division make a firm commitment to the nearly 10,000 individuals on the waiting list that every possible step is being taken to reduce agency spending so that their "wait" for services will not be in vein. Finally, since DRS receives a total budget in excess of \$77 Million Dollars per year, yet has committed to spending just over \$27 Million Dollars¹¹ on client services in FY 2008, the Client Assistance Program recommends the Division be more accountable to the Tennesseans with disabilities they are funded to serve and for whom they exist.

⁸ As reported in the 2006 VR State Plan, approximately 30 of these positions were converting Transition School to Work Case Managers to DRS employment from LEA contracts.


⁹ 35 cents of every dollar spent on payroll

¹⁰ Order of Selection began in Tennessee in August of 2001. In FY 2000 VR State Plan - DRS reported providing services to 47,105 individuals compared to the 23,100 goal this year.

¹¹ 2008 VR State Plan - Annual Estimates

Thank you for the consideration of our comments. Please know that we would certainly welcome the opportunity of meeting with you to discuss any of the matters addressed in this letter.

Sincerely,


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